

Serial No. 09/759,430

Docket No. HRT 228

REMARKS

Claims 14-30, and 36-72 are pending. Claims 1-13 and 31-35 are cancelled; claims 62-72 are new. No new matter has been added.

The Examiner rejected claims 14-30 and 36-61 under 35 U.S.C. § 102(e) as being anticipated by Makower (US Patent No. 5,830,222). Applicants respectfully traverse the rejection. The Examiner states that "surgical staples are well known in the art to pierce tissue that they are attached to, therefore, the staples as shown in Figs. 9A and 9B are assumed to meet the most recently added limitation of contacting various surfaces." Applicants assume that the "recently added limitation" the Examiner refers to in the office action is the limitation added to each of the independent claims in the prior amendment:

permitting the at least a portion of each of the tissue securing elements to move from the biased configuration to the unbiased configuration, whereat each first end of each tissue securing element contacts *the inner surface* of the *second* hollow tissue structure and each second end of each tissue securing element contacts *the outer surface* of the *second* hollow tissue structure.

Applicants submit that Makower does not teach or disclose the above limitation as the ends of the staples 95 depicted in Makower are shown as contacting *the inner surface* of the *first* hollow tissue structure (coronary artery 2) and *the inner surface* of the *second* hollow tissue structure (coronary vein 3). There is no teaching that the ends of staples 95 penetrate the vessels walls, nor is there a teaching that if the ends of the staples do penetrate the vessel walls that the ends penetrate the tissue 29 that separates the coronary artery 2 and coronary vein 3. As a result, applicants submit that the claims as presented are patentable over Makower, and request that the Examiner withdraw the rejection.

The Examiner also rejected claims 14-30 and 36-61 under the judicially created obviousness type double patenting over claims 1-13 of US Patent No. 6193734 and claims 14-17 of copending US Patent Application Serial No. 10/858640. Applicants traverse these rejections

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as the claims of the 734 patent and 640 application do not teach to each an every element of the claims 14-30 and 36-61 of the pending application. For example, claims 14-17 do not teach at least the element detailed above added in the prior amendment. As a result, applicants submit that claims of the subject application are patentable over the pending claims of the 734 patent and the 640 application, and request the Examiner to withdraw the provisional rejection.

Applicants added new claims 62-72 to further define the invention. A number of these claims further define the holding step as comprising "disposing at least a portion of each of the plurality of tissue securing elements in the plurality of openings", while a number define that the plurality of openings communicate with one another. Applicants submit that these claims define further novel subject matter.

Applicants grant permission to the Commissioner to charge any fee, including the fee associated with the additional dependent claims added by this amendment, that is required during the prosecution of this application.

Respectfully submitted,

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